

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

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In the Matter of )  
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Rules and Regulations Implementing the )  
Telephone Consumer Protection Act of 1991) )  
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FCC 03-62  
CG Docket No. 02-278

COMMENTS OF THE CITY OF CHICAGO

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## 1. INTRODUCTION AND PROCEDURAL BACKGROUND

These comments are filed on behalf of the City of Chicago in response to the Further Notice of Proposed Rulemaking and Memorandum of Opinion and Order (“FNPRM”) of the Federal Communications Commission (“FCC”) in the above docket, released March 25, 2003.<sup>1</sup>

On September 18, 2002, pursuant to the requirements set forth in the Telephone Consumer Protection Act of 1991 (“TCPA”), the FCC implemented a Notice of Proposed Rulemaking (“NPRM”) proceeding to determine: (1) the necessity of a national-do-not call list; and (2) the need for revisions to the TCPA rules adopted by the FCC. The City of Chicago, along with thousands of others, filed comments with the FCC on this NPRM. The comments, on the whole, reflect consumers’ frustrations with the current lack of regulation of telemarketers and provide a factual basis for further telemarketing regulations.

While this docket was pending, the Federal Trade Commission (“FTC”) adopted a national do-not-call registry.<sup>2</sup> Congress subsequently directed the FCC to consider the FTC’s newly adopted do-not-call rules and to “issue final rules” by September 2003.<sup>3</sup> With this Congressional mandate, the FCC released this Further Notice of Proposed Rulemaking (“FNPRM”) seeking “comment on

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<sup>1</sup> The Further Notice of Proposed Rulemaking (“FNPRM”) was published in the federal register on April 3, 2003.

<sup>2</sup>Telemarketing Sales Rule, Final Rule, Federal Trade Commission, 68 Fed. Reg. 4580.

<sup>3</sup>Further Notice of Proposed Rulemaking (“FNPRM”), FCC Docket No. 03-63, at ¶5.

how the FCC can maximize consistency with the FTC's rule.”<sup>4</sup>

The City of Chicago requests that the FCC consider the comments it previously filed in the NPRM proceeding, and provides the following additional comments in response to this FNPRM.

## **II. CITY OF CHICAGO**

The City of Chicago (“City” or “Chicago”) is a home rule unit of municipal government in Illinois with a population of approximately 2.9 million people. As both a consumer of telecommunications services and as a representative of its numerous residents who also are telecommunications consumers, the City has a considerable interest in the current proceeding.

The City of Chicago’s Department of Consumer Services has the responsibility of ensuring fair treatment of consumers in various commercial markets. In that capacity, it responds to and tracks a variety of complaints from consumers, including complaints regarding telecommunications matters. The employees of the City’s Department of Consumer Services are often called upon to discern the nature of a consumer complaint, to identify any governing regulatory authority, and to act as an intermediary that directs the consumer or forwards the consumer’s complaint to the appropriate regulatory agency. As a result, the Department of Consumer Services has become well-versed in consumer issues respecting its residents’ participation in telecommunications markets and the effect of certain activities in those markets on its residents’ quality of life. These comments are based upon the knowledge and experience of the City’s Department of Consumer Services.

Like the Commission, the City is often called upon to balance the interests of commercial entities and those of consumers. In this instance, the City has concluded that legitimate privacy

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<sup>4</sup>FNPRM at ¶5.

interests of telecommunications consumers have been unnecessarily and unduly subordinated to cost and convenience concerns of telemarketers. Accordingly, Chicago responds to the Commission's further request for comments by recommending the following:

**(1) Establish a single, comprehensive national do-not-call list** -- since the FTC's jurisdiction is limited, the FCC should adopt rules to regulate the telemarketing practices of entities outside the FTC's jurisdiction that (a) are identical to, or fully compatible with, the FTC's rules, and (b) use the do-not-call database already established by the FTC;

**(2) Act promptly in establishing national do-not-call regulations** -- since this is an issue of national importance that adversely affects all consumers, the FCC should ensure the effectiveness of a comprehensive do-not-call list at the earliest possible date.

### **III. THE FCC SHOULD ESTABLISH A NATIONAL DO-NOT-CALL LIST.**

#### **A. The FCC Has Jurisdictional Authority to Establish a National Do-Not-Call List.**

When Congress enacted the Telephone Consumer Protection Act of 1991 ("TCPA"), it foresaw the need for a nationwide do-not-call list. Consequently, the Congress instructed the FCC to consider implementing regulations that would "require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations . . . ." 47 U.S.C. 227 (c) (3)(B). The Commission declined to exercise that authority in adopting its initial rules implementing the TCPA.<sup>5</sup> That choice has allowed the Commission to gain the benefit of almost ten years of experience.

As acknowledged by the Commission in the NPRM, that decade of experience has shown

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<sup>5</sup>Notice of Proposed Rulemaking ("NPRM"), In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CC Docket No. 02-278, at ¶5.

that:

- providers' cost (and even convenience) concerns may be given greater weight than consumers' privacy interests in any balancing of interests on this issue;<sup>6</sup>

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<sup>6</sup>NPRM at ¶5.

- the negative reactions of consumers to unsolicited telemarketing calls have reached an extraordinary level;<sup>7</sup>

- the pace and direction of advances in technology pertinent to telemarketing and the uses to which that technology has been put suggest strongly that voluntary industry solutions are unlikely to be effected or effective;<sup>8</sup>

As further detailed in these Comments and the Comments filed by the City in the NPRM proceeding, the empirical factors noted above impel Commission action to correct the undue burdens imposed on consumers and to remedy the absence of any effective means of avoiding unwanted intrusions by commercial enterprises using telecommunications technology. In sum, the time has come for the FCC to exercise the authority granted to it by the Congress, by requiring and implementing a national do-not-call list. That regulatory mechanism will work best if the FCC's actions meld seamlessly with those of the FTC to create a single, nationwide do-not-call list that covers all telemarketers.

**B. The FCC Should Mandate a National Do-Not-Call List that Uses the FTC's Program to Remedy the FTC's Jurisdictional Limitations.**

Because of jurisdictional limitations, the FTC's do-not-call regulations do not provide consumers with the seamless and universal protection from annoying telemarketing calls. The FTC's rules do not, and cannot, provide consumers with protection from the telemarketing calls of banks, credit unions, savings and loans, common carriers, nonprofit organizations or insurance

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<sup>7</sup>NPRM at ¶ 8.

<sup>8</sup>NPRM at ¶7.

companies.<sup>9</sup> The FCC is able to bridge these gaps in coverage by: (a) issuing rules identical to the FTC's that cover those entities exempt from the FTC's jurisdiction; and (b) working with the FTC to establish a single comprehensive do-not-call database.

The rather large gaps in the FTC's jurisdiction coverage could mean that consumers participating in the FTC's do-not-call program would continue to be bothered by unwanted calls from a substantial portion of the companies that market through telephone solicitation. Receiving telemarketing calls from these entities -- after having signed up for a 'nationwide' do-not-call list sponsored by the federal government -- would confuse and frustrate consumers. Such confusion could easily magnify the spate of complaints received by both the FCC and the FTC, as well as local government units. If the jurisdictional gap in coverage is not bridged, the average consumer will view the do-not-call regulations as littered with 'loopholes' and designed to benefit 'special interest groups'.

At the basest level, not remedying the jurisdictional concerns stymies the effectiveness of the do-not-call initiative. The FTC's do-not-call program allows certain telemarketers to bother those who do not wish to be bothered. A less than comprehensive do-not-call program cannot reach its goal of assisting the consumer in dealing with unsolicited telephone calls. The only way to reach this goal is by using the FCC's broader jurisdiction to implement comprehensive do-not-call rules.

There is a risk of similar gaps in effective coverage and consumer frustration if the FCC's rules and program do not take full advantage of the do-not-call registry already being established by the FTC. The FCC should avoid establishing its own separate do-not-call data base. Should the

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<sup>9</sup>NPRM at ¶10.

FCC and FTC each have independent data bases, consumers would be required to make duplicate registration efforts -- perpetuating one of the problems that prompted the Commission's NPRM proceeding. Telemarketers would have the increased regulatory burden of checking separate data bases. Finally, the FCC and the FTC would face complaints of regulatory inefficiency. Consumers are entitled to have government agencies 'talk to one another' rather than have to repeatedly register with different agencies to prevent telemarketing calls.

#### **IV. THE FCC SHOULD ACT QUICKLY IN IMPLEMENTING NATIONAL DO-NOT-CALL REGULATIONS.**

Based on the City's experience with consumer complaints, unsolicited telemarketing calls have become a source of major inconvenience and annoyance. Indeed, even a cursory review of some of the thousands of comments filed in the NPRM and the FTC proceeding demonstrates the frustration, hostility, powerlessness and annoyance felt by the public in dealing with telemarketers. The problem has reached unacceptable dimensions, and time is of the essence in ending these unsolicited intrusions on consumers' lives by telemarketers.

Additionally, as stated in the above-section, inconsistent rules or a less than comprehensive data base will be a source of confusion and frustration for consumers. To enable the success of both the FTC and FCC program, the FCC must act expeditiously to establish uniform rules and a single comprehensive national do-not-call registry.

#### **V. CONCLUSION**

For the reasons stated above, the City urges the FCC to establish comprehensive national do-not-call regulations forthwith.